

MEMORANDUM OF LAW

DATE: June 22, 1993

TO: Ed Ryan, City Auditor and Comptroller

FROM: City Attorney

SUBJECT: Manual Checks Caused by Child Support Payments

Recently, the number of wage assignments ordered by courts has increased dramatically. You have indicated that the vast majority of the wage assignments are for child support. The assignments or garnishments require that the Auditor's office manually process the additional checks, greatly increasing the Auditor's office workload. You have requested an opinion regarding the legality of disciplining employees whose wages have been garnished.

California Labor Code section 2929 provides in pertinent part:

No employer may discharge any employee by reason of the fact that the garnishment of his wages has been threatened. No employer may discharge any employee by reason of the fact that his wages have been subjected to garnishment for the payment of one judgment. A provision of a contract of employment that provides an employee with less protection than is provided by this subdivision is against public policy and void.

Additionally, California Civil Code section 4390.17 referring to wage assignments for child support payments provides:

No employer shall use any assignment authorized by this chapter as grounds for refusing to hire a person or for discharging or taking disciplinary action against an employee. An employer who engages in

the conduct prohibited by this section may be assessed a civil penalty of a maximum of five hundred dollars (\$500).

Finally, California Civil Code section 4726.1(l), dealing with the assignment of health benefits for minor children, provides:

No employer shall use any assignment authorized by this section as grounds for refusing to hire a person or for discharging or taking disciplinary action against an employee. An employer who violates this subdivision may be assessed a civil penalty of a maximum of five hundred dollars (\$500).

As is indicated by the above sections, the legislature has acted strongly to insure the support, maintenance and education of minor children. The Uniform Civil Liability for Support Act ("the Act"), California Civil Code section 241 et seq., provides for reciprocity for child support among the states, the District of Columbia, territories, United States possessions and Puerto Rico. In both California and Federal statutes, very liberal regulations regarding the garnishment of wages are provided when the garnishment is for the purpose of child support. For example, under the Federal Consumer Credit Act, 15 U.S.C. sections 1601 et seq., limitations are placed on the maximum amount of the aggregate disposable earnings that is subject to garnishment, 15 U.S.C. section 1673. However, when the wage garnishment is for child support, the limitations are increased from 25% of one's income to 50% of one's income. The Federal Consumer Protection Act, like the California Labor Code section, provides in pertinent part: "No employer may discharge any employee by reason of the fact that his earnings have been subject to garnishment for any one indebtedness." 15 U.S.C. section 1674.

CONCLUSION

Wage garnishment allows for legally owed debts to be discharged by the debtor through a specific court approved process. To protect the efficiency and usefulness of the garnishment process, disciplinary actions based on garnishments are prohibited by law.

If you have further questions, please contact me.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

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